



The Telecommunications Association

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

TEL +1-202-872-0030

FAX +1-202-872-1331

Direct Dial 202-872-1264

Internet: JSheldon@CapAccess.org

RECEIVED

MAR 21 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Ex Parte

March 21, 1996

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

Re: 2 GHz Microwave Relocations
WT Docket No. 95-157

Dear Mr. Chairman:

UTC, The Telecommunications Association (UTC) wishes to respond to the allegations raised by the Cellular Telecommunications Industry Association (CTIA) in its letter to you of March 1, 1996. CTIA has moved from zealous representation of its constituents to blatant misrepresentation to this agency.

In its letter, CTIA unabashedly accuses eleven incumbent licensees in the 2 GHz microwave band of being "extortionists." Although UTC would not purport to speak on behalf of these licensees individually regarding these allegations, UTC feels compelled to point out some of the inconsistencies as well as fabrications in CTIA's most recent tirade.

Once again, CTIA uses its own definition of "extortion" to make these allegations; *i.e.*, any counter-offer or request made by an incumbent that exceeds the PCS licensee's offer is, by CTIA's definition, "extortion." Incredibly, CTIA has managed to ignore the two terms that define the very process in which PCS licensees and microwave incumbents are engaged: voluntary negotiations. If anything, the materials submitted by CTIA demonstrate that parties are meeting, exchanging relocation estimates, and discussing relocation timeframes.

Review of the "Bad Actor" forms and other material appended to CTIA's letter demonstrate how reckless CTIA's allegations really are:

- Using slight-of-hand calculations, CTIA accuses these eleven companies of demanding an average "per link excess charge" of \$1.5 million. To inflate the costs to this magnitude, CTIA cleverly divides the total system replacement costs provided by each licensee by just the paths in which Sprint Spectrum has expressed interest.¹ The need

¹ See, e.g., materials relating to Union Oil; Union Pacific Railroad; Guadeloupe Valley Electric Cooperative; and Williams Wireless, Inc. appended to the CTIA letter.

021
No. of Copies rec'd
LH ADJOS

for system-wide microwave relocations was acknowledged by Sprint and many of the other commenters in the “cost-sharing” docket, yet CTIA omits any reference to the cost-sharing proceeding.² How can a request for a system-wide relocation be considered “extortion” when the FCC has proposed rules to facilitate such agreements, and when the PCS industry has overwhelmingly supported these proposed rules?

- In some cases, CTIA would have the FCC intervene even before the PCS licensee has responded to the microwave licensee with a counter-offer or other response. For example, in CTIA’s “Bad Actor” form for Burlington Northern - Santa Fe Railroad, the following notes from Sprint or its consultant can be found:

“We have not responded to [the BNSF] proposal since STV has begun to work well with BNSF in other MTAs and BNSF will only negotiate a single sub-system at a time. It is expected that this sub-system will be next for negotiation and STV plans to use the good faith precedence set in other sub-systems for the negotiation of our single path for relocation.”

Even though neither Sprint nor its consultant responded to the BNSF proposal, and even though Sprint states that it “has begun to work well with BNSF,” CTIA twists these facts around to meet its own political agenda by alleging that BNSF is engaged in “extortion.”

- The information appended to CTIA’s letter also calls into question whether PCS licensees are negotiating in good faith with incumbents, or whether they are simply engaged in a coordinated effort to elicit “evidence” that could be used to revise the relocation rules. For example, in a summary of her first meeting with one incumbent, Sprint’s agent reported to Sprint that she would “try and get [the incumbent’s] starting position in writing from them so that if we need to go to the FCC, we have some proof.”³ UTC questions whether Sprint instructed its agent to negotiate with the incumbent or to entrap the incumbent.

The unfortunate result of CTIA’s rhetoric is a self-fulfilling prophecy: future negotiations are likely to falter or fail because CTIA is creating an environment of distrust in which no incumbent will feel comfortable negotiating. If an incumbent cannot submit a proposal to a PCS licensee without fear of being publicly labeled an “extortionist” no matter how reasonable its opening offer, why would any incumbent even agree to negotiate at this point in the process?

² “Systemic relocations can cost three to five times more than the relocation of individual links, but can be, in the long run, more spectrum efficient, less costly and less disruptive.” Comments of SprintTelecommunications Venture, filed November 30, 1995, in WT Docket No. 95-157, at p. 23.

³ See September 20, 1995, “Negotiations Summary for Suffolk County Police,” prepared by Katie Drucker, and appended to the CTIA letter.

Hon. Reed E. Hundt
March 21, 1996
Page 3

To help you better understand the status of negotiations, I am attaching the results of a recent UTC survey on negotiations between incumbents and the A and B block PCS licensees. As you will note, a significant number of microwave paths are under contract for relocation, and an even greater number of paths are currently subject to negotiations. Equally significant, a large percentage of the survey respondents indicate they have paths in the A and B block for which they have not even been contacted about relocation!

UTC would be happy to provide you or your staff with examples of some of the hard-ball negotiating tactics used by PCS licensees and their agents, including some of the outright misrepresentations some of these parties are making to incumbents as to their rights and obligations during the voluntary negotiation period. However, public debate over these negotiations would only serve to heighten the tension created by CTIA between the incumbent community and PCS licensees, and would needlessly involve the Commission in the details of what were intended to be market-based negotiations and relocations.

Mr. Chairman, we urge you to carefully review the materials submitted by CTIA and to draw your own conclusions as to which parties are negotiating in good faith and which are gaming the process through political maneuvering. Instead of proving the existence of an "extortion delta" in PCS negotiations, CTIA's letter proves there is a "distortion delta" between its rhetoric and the truth.

Very truly yours,



Jeffrey L. Sheldon
General Counsel

Attachment

cc (w/ attachment):

Commissioner James Quello
Commissioner Susan Ness
Commissioner Andrew Barrett
Commissioner Rachelle Chong
Michele Farquhar, Chief, Wireless Telecommunications Bureau
Ralph Haller, Deputy Chief, Wireless Telecommunications Bureau
Rosalind Allen, Associate Bureau Chief, Wireless Telecommunications Bureau



The Telecommunications Association

TEL +1•202•872•0030
FAX +1•202•872•1331
Direct Dial

UTC SURVEY OF MICROWAVE INCUMBENTS REVEALS INCUMBENTS ARE NEGOTIATING; DEALS ARE BEING REACHED

In an effort to determine the status of negotiations between microwave incumbents and PCS licensees, UTC, The Telecommunications Association, conducted a survey of all incumbents licensed in the bands affected by the Block A and B PCS licensees. The survey instrument queried incumbents as to whether they operate paths: (1) subject to completed relocation agreements; (2) for which relocation negotiations are underway; and (3) for which they have not been contacted. The survey also inquired as to the number of paths associated with each of these responses, and whether the incumbent has refused to negotiate or withdrawn from negotiations.

Over 400 surveys were mailed to incumbents during early February 1996 and 103 responses, representing incumbents with nearly 1300 paths, were received. The results of the survey were suprising:

- 32% of respondents have entered into relocation agreements with PCS licensees regarding a portion of their microwave paths;
- in less than one year after the voluntary negotiation period began, 19% of respondent microwave paths are subject to a relocation agreement;
- 64% of the respondents are currently in negotiations;
- 42% of respondent paths are the subject of current negotiations;
- 51% of respondents have not been contacted regarding a portion of their microwave paths;
- of those that have been contacted regarding all of their microwave paths, 32% have completed relocation agreements and 62% are currently in negotiations;
- the respondents that have concluded agreements or are currently negotiating with the PCS licensees operate approximately 786 paths, or 60% of the total respondent microwave paths affected by the Block A and B licenses;
- only one respondent has withdrawn from negotiations due to the intractable position of the PCS licensee in its area.

The survey results offer a stark contrast to the image of negotiations being painted the PCS industry.

- While one PCS association is claiming that the process is not working, the results clearly indicate that it is -- 60% of microwave paths affected by the Block A and B licenses are the subject of either current negotiations or of successfully concluded relocation agreements.
- The PCS association implies that the incumbents are delaying the deployment of PCS, yet the survey results reveal that deployment is not being delayed by refusals to negotiate on the part of incumbents but by the failure of PCS licensees to begin negotiations -- none of the respondents have refused to negotiate with PCS licensees (though one has delayed negotiations to better prepare technical information), yet over half the respondents have not been contacted regarding some or all of their Block A and B paths.
- The PCS association claims that incumbents are taking advantage of the current negotiation period by refusing to negotiate, yet not a single survey respondent indicated that it has refused to negotiate with PCS licensees even during this voluntary negotiation period. The single respondent that did delay negotiations did so simply to provide additional time to analyze its technical requirements.

The survey results offer an objective view of the true status of negotiations. Unlike the inaccurate statements based on exaggerated figures and half-truths that have been spread by one PCS association, the results of the survey demonstrate that the current rules are working and agreements are being reached.